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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,284	11/20/2003	Akira Fukushima	03627/LH	3180
1933	7590	04/18/2006	EXAMINER	
FRISHAUF, HOLTZ, GOODMAN & CHICK, PC			BEACH, THOMAS A	
220 Fifth Avenue			ART UNIT	PAPER NUMBER
16TH Floor				3671
NEW YORK, NY 10001-7708			DATE MAILED: 04/18/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/719,284	FUKUSHIMA, AKIRA	
	Examiner	Art Unit	
	Thomas A. Beach	3671	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on amendment filed 02/09/06.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Taghon 4,393,41. Taghon shows a crawler frame for a construction machine having a center frame 6 and right and left track frames 17 disposed on the right and left sides of the center frame so as to extend in a back and forth direction, wherein the center frame comprises a central frame section 6 and legs 41 for connecting the central frame section to the track frames, and the legs are formed from cast steel.

As concerns claim 2, Taghon shows the legs of the center frame have a tubular shape and the top faces (since the "top faces" has not been set forth in the claim as being in any particular direction) of the legs are convex in cross-section (figure 4).

2. Claims 1 and 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 11-93209. JP '209 shows a crawler frame 8 for a construction machine having a center frame and right and left track frames 1 disposed on the right and left sides of the center frame so as to extend in a back and forth direction, wherein the center frame comprises a central frame 45 section and legs 33/46 for connecting the central frame section to the track frames, and the legs are formed from cast steel.

As concerns claims 4 and 5, JP '209 shows a joint flange section 39 joined to the central frame section is provided at the inner end of each leg and a joint flange section joined to a said track frame is provided at the outer end of the leg (figure 2).

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3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by JP 2001-106128. JP '128 shows a crawler frame for a construction machine having a center frame 1 and right and left track frames 7 disposed on the right and left sides of the center frame so as to extend in a back and forth direction, wherein the center frame comprises a central frame section 3 and legs 5, 6, 8, 9 for connecting the central frame section to the track frames, and the legs are formed from cast steel.

4. Claims 1 and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 9-209402. JP '402 shows a crawler frame (figs. 1 & 3) for a construction machine having a center frame and right and left track frames 2' disposed on the right and left sides of the center frame so as to extend in a back and forth direction, wherein the center frame comprises a central frame 1' section and legs 1'U for connecting the central frame section to the track frames, and the legs are formed from cast steel.

As concerns claims 4 and 5, JP shows a joint flange section 1'C joined to the central frame section is provided at the inner end of each leg and a joint flange section joined to a said track frame is provided at the outer end of the leg (figure 2).

As concerns claim 6, JP shows the legs are inner end to the outer respectively gently widened from the end (figs. 6 & 11).

Claim Rejections - 35 USC § 103

5. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2001-106128 in view of Braithwaite 4,069,637. JP '128 does show legs of the center frame 5, 6, 8, and 9, but does not show the legs to have top faces that are convex or a

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cylindrical pipe shape in cross section. However, Braithwaite shows a similar crawler vehicle 10 where the tubular structural elements 48, 50 are shown to have top faces that are convex or a cylindrical pipe shape in cross section. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify JP '128, as taught by Braithwaite, to include cylindrical cross section to improve the strength of the structural members of a crawler (col. 1, lines 34-46).

6. Claims 2-3 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 9-209402 in view of Braithwaite 4,069,637. JP '402 does show legs 1'C of the center frame that are tubular (box-shaped), but does not show the legs to have top faces that are convex or a cylindrical pipe shape in cross section. However, Braithwaite shows a similar crawler vehicle 10 where the tubular structural elements 48, 50 are shown to have top faces that are convex or a cylindrical pipe shape in cross section. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify JP '402, as taught by Braithwaite, to include cylindrical cross section to improve the strength of the structural members of a crawler (col. 1, lines 34-46).

As concerns claims 7-8, the combination shows a joint flange section (1'C; JP'402) joined to the central frame section provided at the inner end of each leg and a joint flange section joined to a said track frame is provided at the outer end of the leg (fig 11).

Response to Arguments

7. Applicant's arguments with respect to casting verse welding of the steel have been considered, but they are not persuasive. Thus, plates of steel of the references have at some point been casted, thereby meeting the claimed limitation. The apparatus claims in this application are being argued as patentable by the method of manufacturing which remains rejected, as noted, and furthermore, do not carry patentable weight since any method of manufacture would not result in a structural difference between the claimed invention and the prior art, thus not patentably distinguishing the claimed invention from the prior art. If the prior art structure is capable of manufactured in other methods, then it meets the claim.

8. Applicant's arguments regarding the convex or circular section of the legs amount to a general allegation that the claims define a patentable invention without specifically pointing out how the motivation to combine the references has not been shown. On the contrary, the motivation to combine references is demonstrated above in the rejection with a clear reason to combine. Therefore, these arguments are not persuasive.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Beach whose telephone number is 571.272.6988. The examiner can normally be reached on Monday-Friday, 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571.272.6998. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thomas A. Beach

April 5, 2006

THOMAS A. BEACH
Primary Examiner
Group 3600